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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 12 and 19)
of the Cable Television Consumer)
Protection and Competition Act of 1992)

MM Docket No. 92-265

Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)

TO: The Commission

PETITION FOR RECONSIDERATION

On behalf of Black Entertainment Television, Inc. ("BET"), we hereby submit this limited petition for reconsideration of the Commission's First Report and Order in the captioned proceeding, released April 30, 1993 (FCC 93-178). Specifically, BET urges the Commission to adopt a more flexible attribution standard than proposed for minority-owned cable programmers, as hinted by the Commission in footnote 19 of the First Report and Order, or to adopt the single majority shareholder exemption applicable to the broadcast attribution rule.

In the First Report and Order, the Commission adopted a very strict attribution standard to determine whether a cable programmer is vertically integrated. Specifically, any ownership of five percent or more by a cable operator in the stock of the programming vendor is considered attributable, whether the stock is voting or non-voting. Similarly, limited partnership

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interests of five percent or more are considered attributable, regardless of insulation, as are all officers, directors and general partnership interests. First Report and Order, ¶31. The Commission also declined to adopt the single majority shareholder exemption of the broadcast attribution rule. Id.

In footnote 19 of the First Report and Order, the Commission stated:

[T]o the extent that certain parties advocated a more flexible attribution standard for minority-owned cable programmers, we could revisit this attribution standard, to the extent that it is consistent with this section of the 1992 Cable Act, and would promote minority programming.

It is unquestionably consistent with both Sections 19 and 9 of the 1992 Cable Act to adopt a more flexible attribution standard for minority-owned cable programmers than that adopted by the Commission for other cable programmers.

The stated purpose of Section 19 is to "increas[e] competition and diversity in the multichannel video programming market" 47 U.S.C. § 548(a)(emphasis added). Furthermore, Section 9(a) of the Act, regarding commercial leased access, amends Section 612(a) of the Communications Act to add as a specific purpose of that section, the goal "to promote competition in the delivery of diverse sources of video programming" Section 9(c) of the Act allows cable operators to carry qualified minority programming to satisfy up to 33%

of the cable operator's commercial leased access requirements, "whether or not such source is affiliated with the cable operator." A "qualified minority programming source" is defined as one "which is over 50 percent minority-owned." Section 9(c)(i)(2).

These express provisions of the 1992 Cable Act show that Congress was acutely aware of the need to assist minority-owned programming sources to further a diversity of viewpoints over cable and other multichannel programming sources. BET, of which more than 50% of the voting stock is minority owned, faces particular problems in gaining access to cable and other multichannel program distributors that other programmers with broad based appeal such as ESPN and USA Network do not face. Yet, the anomaly of the Commission's First Report and Order is to discriminate against BET vis-a-vis those other mass appeal cable programming sources, since those other sources do not have any cable investors. Without cable investment, BET probably would not exist at all. In other words, ESPN and USA Network are free to deal with program distributors in ways that BET cannot because of the Commission's decision.

BET unquestionably promotes a diversity of viewpoints and is a minority owned programming source under Section 9(c) of the 1992 Cable Act. To draw a distinction between the way BET is treated for purposes of commercial leased access in Section 9 and

the right of BET to obtain access to multichannel program distributors in Section 19 is both illogical and disserves the stated purpose of Section 19 to promote program diversity. Because of the peculiar nature of minority programming (as opposed to sports or other mass appeal programming), BET needs the flexibility to deal with different program distributors on different terms to obtain access to those distribution sources. Simply stated, access to program distribution sources is the lifeblood of BET and, without BET, there is less program diversity.

Even if BET is exempted from the attribution rules set forth by the Commission, it would still be subject to general antitrust considerations, as are all other non-affiliated cable programmers. However, the market power of BET and thus, its ability to act as a monopolist, is much less than that of many non-affiliated programmers. The problem BET faces more often is that of gaining access to the program distributor. Its ability to control prices in this context is nonexistent.

Accordingly, the Commission should adopt an exemption for minority-owned programming sources in Section 19 similar to the provision contained in Section 9(c) of the 1992 Cable Act. Alternatively, the Commission should adopt the single majority shareholder exception of the broadcast attribution rules, which are much more closely akin to the issues at stake in this

proceeding than are the video dialtone rules adopted by the Commission. In the video dialtone context, there is no stated public interest purpose to promote a diversity of viewpoints, as there is in both the broadcast context and in Section 19 of the 1992 Cable Act.

Respectfully submitted,

BLACK ENTERTAINMENT TELEVISION

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